

Belgium | 9 April 2015



Imminent Belgian “look-through tax” on income from legal constructions Newsflash

The so-called look-through tax (doorkijkbelasting or impôt de transparence), also referred to as the “Cayman tax”, was announced in the Government Agreement of 9 October 2014. Although the tax itself (once submitted to Parliament, voted and published) will be new, it was not really unexpected.

It all started with the reporting obligation introduced by the previous government, which wanted individuals to disclose, as of tax year 2014, if they are the founder or (potential) beneficiary (spouse, legal cohabitant, and minor children included) of a so-called ‘legal construction’ (Art. 307, §1, 4th ind. ITC).

Briefly stated, a legal construction is either a typical asset management structure such as a trust, or a non- or low-taxed foreign legal person of which the individual is a founder or beneficiary. A Royal Decree of 19 March 2014 contains a list of tainted entities (69 in total, such as the Bahamas International Business Company, the Cayman Exempt Company, the Liechtenstein Anstalt or Stiftung, the Luxembourg Société de gestion de Patrimoine Familiale, the Stichting Particulier Fonds from the Netherlands Antilles, the Swiss Foundation and the Delaware Limited Liability Company).

From the outset, it was the intention of the previous government to also introduce the possibility to tax founders on the income derived from the property owned by such entity (as if

the property was fictitiously owned by the founder directly), as well as the distributions made by these entities. However, no political agreement was eventually reached on a text acceptable to all parties.

The new government has picked up on this measure and will now introduce a transparency rule, probably as of tax year 2016 (income year 2015).

Currently the Belgian Finance Minister is working on a project of the look-through tax and it is expected that the draft law will soon be introduced in Belgian parliament. It should be noted that the following is based on the information currently available, and may obviously be subject to further changes.

Highlights of the current draft proposal to introduce the look-through tax

Scope of the tax

- A Royal Decree will provide a limitative list with tainted EER structures (foreign legal persons), another Royal Decree will provide a non-limitative list for tainted non-EER legal persons ;
- Belgian taxpayers subject to legal entities income tax (such as not-for-profit organisations) will also become subject to the reporting obligation and the look-through tax.

Taxation of 'fictitious income'

- (Fictional) attribution of the income from the assets owned by the legal structure to the founder/settlor/shareholder or beneficiary ;
- 'normal' taxation depending on the nature of income, e.g.:
- Movable income, taxed at 25%,
- Professional income, taxed progressively with a top rate of 50% (to be increased with communal surcharges).

Counterproof possible

- The look-through tax will not apply to the income of the foreign legal person (company/foundation) if it is proven that the legal person is subject to tax at the rate of at least 15% on a taxable basis calculated under Belgian rules, as if it concerned a Belgian company;
- Proof needs to be delivered on a yearly basis but trusts are not allowed to deliver any counterproof.

Liquidation of the 'legal structure'?

- Upon the liquidation (in the broadest sense) of a foreign legal person, a liquidation dividend is deemed to be distributed;
- The liquidation dividend equals the value accrued in the foreign legal person after the assets entered the structure, but only to the extent of proving that the original assets have been subject to Belgian tax rules ;

- Tax rate is 25%.

Anti-Abuse Rule:

- To achieve tax transparent treatment, a Specific Anti-Abuse Rule regarding the look-through tax will be introduced;
- In addition, changes to the deed of incorporation after 9 October 2014 aiming at the conversion of a tainted foreign legal person into a trust or trust-like entity (without legal personality), or at the conversion of a trust into a tainted foreign legal person, will be ignored by the tax administration.

Please note that this is a preliminary analysis, based on the current draft proposal dated 30 March 2015. As mentioned, the wording of the final texts of law as they will be adopted by the legislative bodies may be different. To assess the impact of the proposed look-through tax on an existing legal construction, please contact Mathieu Ex (mex@greenille.be) or Alain Nijs (anijs@greenille.be) at Greenille by Laga.

Alain Nijs, Advocaat-vennoot/Avocat associé, E-mail: anijs@laga.be
Mathieu Ex, Advocaat-vennoot/Avocat associé, E-mail: maex@laga.be
Tillo Dumont, Advocaat-counsel/Avocat counsel, E-mail: tidumont@laga.be
Joris Draye, Advocaat /Avocat, E-mail: jdraye@laga.be
Caroline Costermans, Advocaat /Avocat, E-mail: ccostermans@laga.be
Mathieu Vancolen, Advocaat/Avocat, E-mail: mvancolen@laga.be

www.laga.be



Laga
Berkenlaan 8a
1831 Diegem, Belgium

A top legal practice in Belgium, Laga is a full service business law firm, highly recommended by the most authoritative legal guides. Laga comprises approximately 100 qualified lawyers, based in Brussels, Antwerp and Kortrijk. Laga offers expert advice in the fields of banking & finance, commercial, corporate/M&A, employment, IT/IP, public/administrative, insolvency and reorganisations, real estate, tax law and litigation. Where appropriate to ensure a seamless and comprehensive high-quality service, Laga lawyers work closely with financial, assurance and advisory, tax and consulting specialists, and with select EU and US law firms.

Laga provides thorough and practical solutions tailored to the needs of clients ranging from multinational companies, national large and medium-sized enterprises and financial institutions, to government bodies.

© 2015, Laga, Belgium - The content and layout of this communication are the copyright of the law firm Laga or its contributors, and are protected under copyright and other relevant and intellectual property rights laws and regulations. No reproduction in any form or through any medium is allowed without the explicit consent of Laga or its contributors.

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.